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IN THE OFFICE OF THE CLERK

Supreme Court of the United States

RAMON DE ARMAS, EMILIO VALENZUELA,
and JOSEPH BALIKES,

Petitioners,

v.

MISTY KINGSLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MARIA J. CHIARO
Interim City Attorney
WARREN BITTNER
HENRY HUNNEFELD
Assistant City Attorneys
945 Miami Riverside Center
444 S.W. 2nd Avenue
Miami, FL 33130-1910

ROBERT S. GLAZIER
Counsel of Record
LAW OFFICE OF
ROBERT S. GLAZIER
540 Brickell Key Drive
Suite C-1
Miami, FL 33131
(305) 372-5900

Counsel for Petitioners

188770

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

I.

a.

Whether a new Constitutional obligation should be imposed upon police officer to conduct further investigation which might uncover additional facts not known to the officer?

b.

Whether the obligation to investigate was clearly established for purposes of qualified immunity?

II.

Whether there is a claim under Section 1983 for malicious prosecution?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Petitioners Ramon De Armas, Emilio Valenzuela, and Joseph Balikes, and Respondent Misty Kingsland. The City of Miami was a party to the proceeding in the district court.

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Appendix B — Order Of The United States District Court For The Southern District Of Florida, Miami Division Dated May 29, 2003 ..... 38a

The opinion of the United States Court of Appeals for the Eleventh Circuit improperly imposes upon police officers a Constitutional duty to investigate for facts not already known to the officers. This duty conflicts with the decisions of other circuit courts of appeal. Petitioners respectfully request that the Court grant a writ of certiorari to the review the judgment of the circuit court.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 369 F.3d 1210 (11th Cir. 2004), and appears as Appendix A. The opinion of the district court is unreported, available online at 2003 U.S. Dist. Lexis 25449 (S.D. Fla. May 29, 2003), and appears as Appendix B.

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Eleventh Circuit was issued on May 11, 2004. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

42 U.S.C. § 1983, Civil action for deprivation of rights, provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the

> jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

We provide the following concise statement of the facts, as stated in the circuit court opinion:

> Kingsland was involved in an automobile accident with off-duty Officer Ramon De Armas of the City of Miami Police Department. . . .

As a result of the accident, Kingsland suffered head trauma, cried, was dizzy, felt sick, and had blurred vision. Following the collision, she climbed out of the rental truck and sat down in a pile of shattered glass adjacent to the truck, cutting her hand. She was disoriented and was "in and out of it.". . . .

[After thirty minutes had passed,] Kingsland remained seated in a pile of shattered glass and was unable to stand up. When asked for her license and registration, she attempted to stand to retrieve it, but had to sit back down. . . .

Officer Valenzuela also noticed that Kingsland's eyes were bloodshot. . . .

Officer Balikes and another officer asked Officer Valenzuela, who is a certified Driving Under the Influence (DUI) technician with two years experience, to administer a field sobriety test on Kingsland. . . .

During the "walk and turn" test, Kingsland did an about face instead of doing the turn as instructed. She also swayed while balancing on one leg, did not properly place her finger to her nose, missed the tip of her nose five times, failed to follow instructions, had eyelid tremors, and failed to keep her eyes shut during the Rhomberg balancing test. Officer Valenzuela concluded that Kingsland failed the sobriety tests. . . .

They performed between two and four Breathalyzer tests, all of which came back negative- with a 0.000% alcohol content. . . .

> Officer Robert Jenkins of the Miami Beach Police Department [*not* the City of Miami, which employed the Defendant Officers] responded and performed more tests on Kingsland, including walking a straight line, touching her nose, and closing her eyes while extending her arms. Officer Jenkins determined that Kingsland's normal facilities were impaired. . . .
>
> Kingsland was then handcuffed, transported to the Dade County jail, and charged with DUI. Her father posted a $1,000.00 bond the following day, and she was subsequently arraigned on charges of careless driving, reckless driving. . . .
>
> [Kingsland] disputes without supporting evidence whether she had bloodshot eyes and slurred speech, and claims that if she did in fact exhibit these characteristics, they resulted from the trauma of the accident and her subsequent continual crying. . . .
>
> On February 5, 1996, the prosecutor provided the negative urine test results to Kingsland's counsel. In May 1996, after two court appearances that resulted in continuances, Kingsland filed a motion to dismiss in light of the drug test results. The charges were dropped on June 6, 1996.[1]

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1. The circuit court opinion also discussed the possible smell of cannabis on Kingsland, concluding that the evidence on this was conflicting. App. 12-13. As stated later in this petition, the reasons for grant a writ of certiorari are not dependent on this issue.

The Plaintiff filed a civil rights suit. The federal courts had jurisdiction based on a federal question pursuant to 28 U.S.C. § 1331, because the case was an action brought under 42 U.S.C. § 1983.

The Plaintiff argued that the police officers had conspired together "to cover up what Officer De Armas did" and to "shift the blame" to the Plaintiff. App. 47. The district court concluded that the Defendants were nevertheless entitled to summary judgment:

> In order for a § 1983 conspiracy claim to stand, there must be an underlying constitutional violation. Here there was no such violation because Ms. Kingsland's arrest was supported by probable cause. More importantly, the Supreme Court has repeatedly held that the constitutional reasonableness of police conduct does not depend on the officer's subjective intent or subjective beliefs. Indeed, the pretextual nature of an officer's conduct is irrelevant. The question, instead, is whether it was "objectively legally reasonable to conclude that [Mr. Kingsland's arrest] was supported by probable cause." The answer to that question is yes. . . .

App. 47-48 (citations omitted).

The Eleventh Circuit Court of Appeals reversed. The circuit court found that there were issues of fact "as to whether the defendants: (1) manufactured probable cause; and (2) failed to conduct a reasonable investigation." App. 20.

As to probable cause, the circuit court stated that it did "not dispute that, in certain situations, an officer may have probable cause to arrest a person if the person was dizzy, performed poorly on field sobriety tests, and exhibited bloodshot eyes and slurred speech. However, the presence of these characteristics cannot be viewed in the absolute." App. 18. The circuit court concluded that "all of the officers' alleged observations are characteristic of a crying accident victim who claims injury. Under the requisite 'totality of the circumstances' approach, a reasonable jury could find that the defendants did not have probable cause to believe that Kingsland was intoxicated." App. 20 n.12.

Concerning the inadequate investigation, the circuit court stated that "[w]hile the constitutional reasonableness of a police investigation does not depend on an officer's subjective intent or ulterior motive in conducting the investigation, it does not follow that the officer may then investigate selectively." App. 15-16 (citation omitted). The court stated that an officer may not "conduct an investigation in a biased fashion or elect not to obtain easily discoverable facts. . . ." App. 16. The circuit court concluded that there was a jury question on whether "the officers conducted a constitutionally sufficient investigation." App. 14.

The circuit court also concluded that the Defendant officers were not entitled to qualified immunity: "If the defendants fabricated or unreasonably disregarded certain pieces of evidence to establish probable cause, as alleged, reasonable officers in the same circumstances and possessing the same knowledge as the defendants could not have believed that probable cause existed to arrest the plaintiff." App. 28.

The Eleventh Circuit also upheld the Plaintiff's claim under Section 1983 for malicious prosecution. App. 20-24.

REASONS FOR GRANTING THE PETITION

The circuit court held that a police officer violates the Constitution when he or she fails to conduct an investigation which might uncover facts not already known to the police officer. This new Constitutional duty conflicts with general principles stated by this Court, and with the holding of several other circuits on the same important question. The Court should grant the writ of certiorari.

I. The decision of the circuit court, imposing a Fourth Amendment duty on a police officer to conduct an investigation which might uncover additional facts, conflicts with general principles of this Court, and the decisions of other circuits

There is no doubt that if an officer arrests a person without probable cause, and if qualified immunity does not apply, then the person arrested has a Constitutional claim against the officer under Section 1983. But the circuit court has imposed a new obligation, in addition to the duty to obtain probable cause. Now officers have a constitutional duty to "conduct a reasonable investigation." This conclusion is wrong, contrary to the decisions of other circuits, and will have a wide-ranging impact on police officers. The Court should grant the writ of certiorari.

A. Improper creation of Fourth Amendment duty to conduct an investigation which might uncover additional facts

Probable cause is an objective standard, based upon the information known to the police officer. There is no inquiry into the mind of the police officer. "Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren v. United States*, 517 U.S. 806, 813 (1996). Accordingly, this Court has repeatedly stated that in determining probable cause, the focus is on the information known to the police officer. "Probable cause existed if' at the moment the arrest was made . . . the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing'" that the suspect had violated the law. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). *Accord Maryland v. Pringle*, 124 S. Ct. 795, 800 n.2 (2003). Probable cause focuses on "the information the [arresting] officers possessed." *Anderson v. Creighton*, 483 U.S. 635, 641 (1987). Fourth Amendment issues are generally "evaluated for objective reasonableness based upon the information the officers had when the conduct occurred." *Saucier v. Katz*, 533 U.S. 194, 207 (2001).

Since the question of probable cause focuses on the information known to the officers, information which the officers *could have* theoretically discovered through additional investigation is not relevant to the probable cause inquiry.

This issue has not squarely been presented to this Court. However, this Court's precedent has shown some skepticism

toward claims that an officer violates the Constitution when he or she fails to further investigate. In *Baker v. McCollan*, 443 U.S. 137, 145-46 (1977), the Court stated that "we do not think a sheriff executing an arrest warrant is required by the Constitution to investigate independently every claim of innocence. . . ."

The issue has been presented to various circuits, and they have rejected the argument that police officers violate the Constitution when they have—in the words of the Eleventh Circuit—"failed to conduct a reasonable investigation."

The circuit courts have rejected the claim that a failure to investigate constitutes a Constitutional violation:

> It will, of course, always be possible to contend in court that an arresting officer might have gathered more evidence, but judges cannot pursue all the steps a police officer *might* have taken that *might* have shaken his belief in the existence of probable cause. . . . [Accordingly,] a police officer's failure to pursue potentially exculpatory evidence [is] not in itself sufficient to negate probable cause. Nor have other circuits held that a reasonable officer must exhaust every potentially exculpatory lead or resolve every doubt about a suspect's guilt before probable cause is established.

Torchinsky v. Siwinksi, 942 F.2d 257, 264 (4th Cir. 1991) (emphases in original). *See Orsatti v. New Jersey State Police*, 71 F.3d 480, 484 (3d Cir. 1995)

> [T]he issue is not whether the information on which police officers base their request for an

> arrest warrant resulted from a professionally executed investigation; rather, the issue is whether that information would warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.

Brown v. Wiita, 7 Fed. Appx. 275, 280 (4th Cir. 2001) ("It will always be possible to take additional investigatory steps. But the law sensibly does not determine reasonableness based on 'second guessing . . . with the benefit of 20/20 hindsight.' . . ."); *Ahlers v. Schebil*, 188 F.3d 365 (6th Cir. 1999).

It is of course true that police officers cannot ignore information actually known to them. "[O]fficers, in the process of determining whether probable cause exists, cannot simply turn a blind eye toward potentially exculpatory evidence *known to them* in an effort to pin a crime on someone." *Ahlers v. Schebil*, 188 F.3d at 372 (emphasis added). But here, the Eleventh Circuit court went beyond merely stating the obvious point that officers must consider information which is known to them. The Eleventh Circuit imposed an additional obligation—"that officers must investigate objectively and consider all information available to them at that time. . . . Nor may the officer conduct an investigation in a biased fashion or elect not to obtain easily discoverable facts. . . ." App. 16. The imposition of this Constitutional obligation goes far beyond the existing law across the country.[2]

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2. We believe that the undisputed facts—that Misty Kingsland was in an auto accident, failed multiple sobriety tests, was dizzy, had bloodshot eyes, and slurred speech—establish that the officers had probable cause to arrest her, or at least arguable probable cause, which is all that is required for qualified immunity. *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

(Cont'd)

B. Improper imposition of duty on individual officers where duty was not clearly established

But the errors of the circuit opinion do not end there. We have argued on the preceding pages that the circuit court opinion conflicts with precedents of this Court and the other circuits. But in denying summary judgment, the circuit court made the additional mistake of potentially imposing liability on the officers even though there is no clearly established law which put the officers on "fair warning" that their conduct was unconstitutional. *Hope v. Pelzer*, 536 U.S. 730 (2002). Without that "fair warning," the officers are entitled to qualified immunity.

Since the courts have not until now imposed upon police officers a Constitutional duty to investigate, the courts have not had much occasion to address the question of whether such a Constitutional obligation is "clearly established." But one district court has addressed the issue, holding that even if it were to impose a duty to investigate, the defendant

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(Cont'd)

The Eleventh Circuit concluded that there was a jury issue on probable cause, because of a factual question on whether the Defendants "manufactured probable cause." This was error. As the district court noted, the question is whether there was probable cause. How it was developed, or any claimed conspiracy, are improper inquiries into the subjective beliefs of the officers.

Furthermore, even if the Eleventh Circuit was correct that the officers were not entitled to qualified immunity on whether there was probable cause for the arrest, the Court should still grant a writ of certiorari, because in any event the circuit court opinion improperly established a new, separate Constitutional duty to conduct an investigation into facts not known by the officers.

was still entitled to qualified immunity, since the right claimed by the plaintiff was not sufficiently clear so that the officer would have reasonably understood that he was violating the plaintiff's constitutional rights. Accordingly, the officer was entitled to qualified immunity. *Walker v. Spiller*, 54 F. Supp. 2d 421, 426-27 (E.D. Pa. 1999).

Here, even if a new Constitutional duty to investigate were to be imposed, the Defendants were not on fair notice of that duty, and thus the officers are still entitled to qualified immunity.

II. The circuit court's recognition of a constitutional claim for malicious prosecution conflicts with the decisions of other circuits

The Eleventh Circuit held that the Plaintiff established a Section 1983 claim for malicious prosecution. This holding is in conflict with the decisions of several other circuits.

Since this Court's decision in *Albright v. Oliver*, 510 U.S. 266 (1994), the circuit courts have been struggling with malicious prosecution claims under Section 1983. "There is considerable confusion among the other circuits that have attempted to determine the applicable law as established by *Albright*." *Awabdy v. City of Adelanto*, 368 F.3d 1062 (9th Cir. 2004).

The Fifth Circuit, for example, recently held that "'malicious prosecution' standing alone is no violation of the United States Constitution, and that to proceed under 42 U.S.C. § 1983 such a claim must rest upon a denial of rights secured under federal and not state law." *Castellano v. Fragozo*, 352 F.3d 939, 942 (5th Cir. 2003), *pet. for cert.*

filed, case no. 03-1269 & 03-1417. "[T]he Fourth, Fifth, and Seventh Circuits do not allow malicious prosecution claims under § 1983, even for Fourth Amendment violations." *Awabdy v. City of Adelanto*, 368 F.3d at 1070 n.4. *See Lambert v. Williams*, 223 F.3d 257 (4th Cir. 2000); *Castellano v. Fragozo*, 352 F.3d at 942; *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2000).

The decision of the Eleventh Circuit, approving a malicious prosecution claim under Section 1983, is in conflict with these other circuits. The Court should grant certiorari to resolve the conflict on this important issue.

CONCLUSION

For the reasons stated, the Court should grant a writ of certiorari and reverse the opinion of the Eleventh Circuit.

Respectfully submitted,

MARIA J. CHIARO
Interim City Attorney
WARREN BITTNER
HENRY HUNNEFELD
Assistant City Attorneys
945 Miami Riverside Center
444 S.W. 2nd Avenue
Miami, FL 33130-1910

ROBERT S. GLAZIER
Counsel of Record
LAW OFFICE OF
ROBERT S. GLAZIER
540 Brickell Key Drive
Suite C-1
Miami, FL 33131
(305) 372-5900

Counsel for Petitioners